



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

December 1, 1994

Honorable Jaime Esparza  
District Attorney  
34th Judicial District  
201 County Building  
El Paso, Texas 79901

Letter Opinion No. 94-079

Re: Whether the El Paso County Attorney may pay a "processing fee" to the district attorney for services rendered in connection with the collection of "hot check" charges (ID# 23416)

Dear Mr. Esparza:

You have requested an opinion concerning the "hot check" collection, prosecution, and fee-splitting process developed and approved by the county attorney's office and the district attorney for the 34th Judicial District of El Paso County. The two authorities entered into an agreement by which the county attorney initiates demand letters and actually collects "hot check" funds, while the filing, prosecution and post-filing collection of "hot check" cases is undertaken by the district attorney. You ask whether such an agreement is permissible in consideration of certain provisions of the Code of Criminal Procedure and the Government Code. We conclude that such an agreement is a lawful exercise of authority.

We first consider the relevant provisions of the Code of Criminal Procedure. Article 102.007 provides for the collection of a fee by a county attorney, district attorney, or criminal district attorney

if his office collects and processes a check or similar sight order if the check or similar sight order:

(1) has been issued or passed in a manner that makes the issuance or passing an offense [under various provisions of the Penal Code].

Code Crim. Proc. art. 102.007(a). Subdivision (f) of article 102.007 addresses the disposition of such fees and states:

Fees collected under Subsection (c) of this article shall be deposited in the county treasury in a special fund to be administered by the county attorney, district attorney, or criminal district attorney. *Expenditures from this fund shall be at the sole discretion of the attorney and may be used only to defray the salaries and expenses of the prosecutor's office, but in no event may the county attorney,*

district attorney, or criminal district attorney supplement his own salary from this fund. [Emphasis added.]

In Attorney General Opinion JM-1034 (1989), this office considered the authority of the county attorney to transfer monies out of the "hot check" fund to the district attorney without the permission of the commissioners court. It was concluded that expenditures from a county attorney's "hot check" fund created pursuant to article 102.007 may be made at the sole discretion of the county attorney *to defray the salaries and expenses of that office (except that such official may not supplement his own salary)*. Furthermore, neither the county attorney nor the commissioners court is authorized to transfer funds from such account to the district attorney or any other official. *Id.* at 4 (emphasis added). Thus the county, district or criminal district attorney may only use the monies deposited in the "hot check" fund to defray the costs incurred by his office in the performance of its statutory duty to collect and process questionable checks or similar sight orders.

We now consider the origin and scope of such statutory duty. The district attorney for the 34th Judicial District derives his authority from section 43.120 of the Government Code which states the following:

(b) The district attorney . . . represents the state in all criminal cases before every district court having jurisdiction in El Paso County.

(c) The district attorney represents the state in all criminal cases pending in the inferior courts having jurisdiction in El Paso County.

Gov't Code § 43.120(b), (c). The Government Code also contains the statutory grant of authority to the county attorney to assist in prosecution of criminal cases.

At the request of the district attorney, the county attorney may assist the district attorney in criminal cases in El Paso County.

The county attorney in El Paso county performs the duty of collecting and processing checks and similar sight orders as provided under Article 102.007, Code of Criminal Procedure, and prosecutes misdemeanors where a check or sight order is the instrument by which the misdemeanor is committed.

*Id.* § 45.171, (c), (d). Section 45.171 was added to the Government Code by Senate Bill 477 in the Seventy-third legislative session. The bill was requested by the El Paso county and district attorney's offices in an effort to

expand the duties of the district attorney for El Paso County by directing the district attorney to represent the state in *all* criminal cases.

The El Paso county attorney's primary duty would be defined as representing the state, El Paso County and its officials in all civil

matters pending before any county or state court. The county attorney would be responsible for . . . collecting and processing checks and sight orders. Upon request, the county attorney could assist the district attorney in criminal cases in El Paso County. A Government Code section describing the county attorney's duties in magistrate court would be repealed. [Emphasis added.]

Senate Judicial Affairs Comm., Bill Analysis, S.B. 477, 73d Leg. (1993). While it is apparent that pursuant to article 102.007 of the Code of Criminal Procedure, the district attorney may institute the collection and processing of checks, and collect the fee resulting from such action, it is also apparent that jurisdiction in "hot check" cases lies concurrently with both the office of the county attorney and the district attorney. It is, therefore, a logical presumption that such concurrent jurisdiction would permit either or both offices to pursue collection of "hot check" charges. Furthermore, the relevant statutes do not prohibit the type of fee-splitting agreement at issue. In the absence of a statutory prohibition, we conclude that pursuant to an agreement between the two offices, the county attorney may pay a percentage of the processing fees collected from hot check prosecution to the office of the district attorney to defray the expenses of the prosecutor's office as limited herein above.

### S U M M A R Y

Pursuant to a contractual agreement, the County Attorney of El Paso County may pay a "processing fee" to the district attorney for services rendered in furtherance of the collection of "hot check" charges without violating article 102.007 of the Code of Criminal Procedure.

Yours very truly,

A handwritten signature in cursive script, reading "Toya Cirica Cook".

Toya Cirica Cook  
Assistant Attorney General  
Opinion Committee